

Message Text

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ORIGIN OPIC-06

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TO AMEMBASSY SANTIAGO

UNCLAS STATE 178194

E.O. 11652: N/A

TAGS: EINV, CI

SUBJ: OPIC-ANACONDA DISPUTE

REF: STATE 169031

1. ON JULY 17, 1975 THE ARBITRATION PANEL IN THE ANACONDA CASE HELD THAT OPIC IS LIABLE ON THE CLAIMS FILED BY ANACONDA WITH RESPECT TO THE 1971 NATIONALIZATION BY CHILE OF ITS TWO MINING PROPERTIES, CHQUICAMATA AND EL SALVADOR. THE PANEL HELD THAT OPIC IS LIABLE WITH RESPECT TO BOTH THE 49 PERCENT SHAREHOLDER INTEREST RETAINED BY ANACONDA FOLLOWING THE 1969 "CHILEANIZATION" AND THE 51 PERCENT INTEREST WHICH IT SOLD IN 1969 IN EXCHANGE FOR CHILE NOTES.

2. OPIC HAD CONTENTED THAT EXPROPRIATORY ACTION OCCURRED IN 1969 AT A TIME WHEN ANACONDA'S COVERAGE WAS IN STANDBY STATUS AND THAT IT COULD NOT THEREAFTER HAVE COVERAGE OR A CLAIM WITH RESPECT TO THE 1971 TOTAL NATIONALIZATION. THE ARBITRATORS HELD THAT EXPROPRIATORY ACTION DID NOT UNCLASSIFIED

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OCCUR IN 1969, BASED ON A FINDING THAT THE 1969 TRANSACTION DID NOT DEPRIVE ANACONDA OF DE FACTO CONTROL OF DAY-TO-DAY OPERATIONS AND ITS DETERMINATION THAT LOSS OF LEGAL OWNERSHIP ALONE DID NOT CONSTITUTE THE LOSS OF "EFFECTIVE

CONTROL" WITHIN THE MEANING OF THE CONTRACT DEFINITION OF EXPROPRIATORY ACTION.

3. OPIC ALSO HAD CONTENDED THAT 1969 TRANSACTIONS HAD ELIMINATED THE INVESTMENT FOR WHICH COVERAGE WAS PROVIDED- ANACONDA'S CONTROLLING EQUITY INVESTMENT IN THE MINING COMPANIES - LEAVING ANACONDA IN 1969 WITH AN INTEREST WHICH AID HAD NOT AGREED TO INSURE--THECHILE NOTES FOR ITS FORMER 51 PERCENT INTEREST AND ITS 49 PERCENT MINORITY STOCK INTEREST. THE ARBITRATORS HOLDING STRESSES CONTINUITY OF THE "PROJECT" AND FINDS "SUFFICIENT NEXUS" TO THE ORIGINALLY INSURED INVESTMENT THROUGH ANACONDA'S CONTINUING FINANCIAL INTEREST IN THE SUCCESS OF THE PROJECT AND THE DE FACTO CONTROL BEING EXERCIESED BY ANACONDA THROUGH THE ADISORY CONTRACTS.

4. FINALLY OPIC HAD CONTENDED THAT VARIOUS MISSTATEMENTS BY ANACONDA TO OPIC AND TO OTHER USG AGENCIES JUSTIFIED DENIAL OF THE CLAIM. THE ARBITRATORS HELD THAT THE MISSTATEMENT TO OPIC WAS NOT MATERIAL AND THAT THEY DID NOT HAVE TO CONSIDER ANACONDA'S MISSTATEMENTS TO OTHER AGENCIES.

5. THE ISSUE OF THE AMOUNT OF COMPENSATION OWED TO ANACONDA BY OPIC, WHICH INVOLVES A NUMBER OF OTHER CONTRACTUAL AND ACCOUNTING QUESTIONS, WAS RESERVED FOR A SECOND PHASE OF THE ARBITRATION.

6. ANACONDA'S ORIGINAL CLAIMS AGAINST OPIC TOTALED 154 MILLION DOLLARS. HOWEVER OPIC EXPECTS THE AMOUNT OF ITS PAYMENT LIABILITY TO BE SIGNIFICANTLY LESS AS A RESULT OF 1) THE RESOLUTION OF CONTRACTUAL AND ACCOUNTING ISSUES AFFECTING THE AMOUNT OF OPIC'S LIABILITY AND 2) THE ALLOCATION TO THE INSURED PORTION OF THE INVESTMENT OF A SHARE OF THE 65 MILLION DOLLARS IN CASH AND 188 MILLION DOLLARS IN NOTES ANACONDA RECEIVED FROM THE GOC PURSUANT TO THE JULY 1974 SETTLEMENT.
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7. COPY OF OPINION BEING POUCHED TO EMBASSY. INGERSOLL

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